

## REMARKS

This paper is submitted in response to the non-final Office Action mailed on March 17, 2008. Claims 1-3, 6-29, 32-47, 50-60, and 62-84 remain pending in the application. Applicant respectfully traverses the rejections and respectfully submits that this application is in complete condition for allowance.

Claims 1-3, 6-11, 14, 15, 17-29, 32, 33, 35-39, 43-47, 51, 53-59, 63, 64-67, 70, 71, 73, 74, and 76-84, of which claims 1, 19, 37, 43, 51, 55, 63, 65, 66, and 74 are independent, stand rejected under 35 U.S.C. § 102(b) as being anticipated by French Patent No. FR2761342A1 to Sylvie ("Sylvie"). In the Office Action, the Examiner asserts:

Sylvie discloses a carton for containing a plurality of articles (Figure 11) comprising:

a plurality of walls including a bottom wall (2) spaced from a top wall (33; Figure 11), a pair of spaced side walls (3) and a pair of spaced end walls (6, 9, 18 and 36) the side (3) and end walls (6, 9, 18 and 36) extending between the top (33) and bottom walls (2);

a plurality of flaps (9) extending from at least some of the walls (Figure 10), the end walls (6, 9, 18 and 36) being formed by combinations of the flaps (see Figure 11; end wall);

a corner of the carton (top corner; Figure 11) formed by one of the end walls (36) and either the top wall (33) or the bottom wall;

a dispenser portion (after removable of member 12) for dispensing articles from the carton, the dispenser portion (12) of the carton being defined by at least one tear line (6) formed in more than one of the flaps (tear line 17 in member 18) and at least in part from the corner (top corner; Figure 11) to define a dispenser opening (as member 12 is removed) for exposing an article for removal from the carton; and

a finger hole (15) for grasping the dispenser portion (12), the finger hole (15) being located opposite from the corner (top corner; Figure 11) and at least in part in the bottom wall (2),

wherein the dispenser portion (12) does not include either of the side walls (3) and the flap (6) extending from the bottom wall (2) is at least one of the flaps through which the tear line (see tear line in member 12; Figure 10) is formed.

(Office Action, pp. 2-3). Applicant respectfully disagrees.

Sylvie is in the French language and a machine translation of Sylvie was provided in an Information Disclosure Statement dated April 23, 2008. Applicant's understanding of Sylvie is based on this machine translation. Sylvie is directed to various carton designs that may be broken down or collapsed back to a relatively flat configuration after use. Sylvie achieves this goal by designing and assembling the carton in such a manner that upon pulling a band portion defined in the carton via suitable tear lines, the carton is capable of conveniently coming apart and collapsing to a relatively flat configuration. Referring to Figs. 10 and 11 of Sylvie, the cardboard blank (32) includes a bottom wall (2) having a longitudinal wall (3) connected on either side thereof by bend lines (34). The bottom and longitudinal walls (2, 3) include flaps (6, 9), respectively, at opposed ends thereof. Each of the bottom wall flaps (6) include scored lines that define a divisible part (12). A finger hole (15) may be provided in bottom wall (2) for initiating separation of divisible part (12) from the remainder of the carton. Each of the longitudinal wall flaps (9) include scored lines (17) that define divisible part (18). One of the longitudinal walls (3) includes a cover (33) connected to an edge thereof by bend line (34). The cover (33) includes a primary panel and a pair of flaps (36) on opposed ends thereof and coupled thereto by bend lines (37). The

primary panel also includes a wall (38) connected thereto along bend line (40). Two generally parallel scored lines (42) extend through the primary panel and flaps (36) to define a divisible band (41).

Fig. 11 shows the carton blank (32) when assembled. When assembled, the divisible portions (12, 18) line up with each other and with the divisible band (41) formed on the cover (33). The assembled carton retains its shape by securing the flaps (6, 9) together. This securement, however, is made on the divisible portions (12, 18). In this way, when the divisible portions (12, 18, 41) are separated from the body of the carton, the attachment points that retain the flaps together are also separated from the carton. Consequently, upon removal of the divisible portions (12, 18, 41), the carton essentially falls apart and takes on a relatively flat configuration.

With this as the understanding of Sylvie, Applicant respectfully disagrees that Sylvie anticipates the claims. The Office Action essentially stands for the proposition that the scored lines in the carton of Sylvie equate to a dispenser or dispenser opening for accessing items in the package. This is not the case and cannot be the case. As noted above, the scored lines in the carton of Sylvie are for the purpose of easily collapsing the carton back down to a relatively flat configuration. Once the divisible portions of the carton are removed, the carton is not able to retain its shape or structural integrity as all of the attachment points have also been removed, thus allowing the carton to fall apart. Such is not a dispenser. For cartons having dispensers, the goal is to provide access to the items inside the carton while simultaneously maintaining the structural integrity of the carton. An alleged dispenser

that when removed allows the carton to fall apart, and therefore not retain the items therein, would not function for its intended purpose, and would be inoperable as a carton for containing items therein.

In short, Sylvie is directed to the problem of breaking down cartons after they are used (e.g., product is already removed from the carton) and not for dispensing items contained in the carton. Moreover, the structural features in Sylvie are designed and intended for that purpose and simply cannot be used as a dispenser. For the above reasons, Applicant fails to see how Sylvie can anticipate any of the independent claims 1, 19, 37, 43, 51, 55, 63, 65, 66, and 74 and respectfully requests that the rejection be withdrawn. Moreover, due to the disparity between breaking a carton down and dispensing items from the carton, Applicant further submits that Sylvie fails to even remotely suggest a dispenser. Furthermore, such a large disparity would also indicate that modifying the carton of Sylvie using the teaching of another reference, so as to arrive at the subject matter recited in the independent claims, would be a strained and difficult position on which to base a rejection.

Claims 2, 3, 6-11, 14, 15, 17, 18, 20-29, 32, 33, 35, 36, 38, 39, 44-47, 53, 54, 56-59, 64, 67, 70, 71, 73, and 76-84 depend from one of the allowable independent claims. Thus, for the reasons provided above, Applicant respectfully submits that these claims are allowable as well.

Claims 12, 40, 50, 60, and 72 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sylvie in view of U.S. Patent No. 4,558,816 to Wood ("Wood"). As each of these claims depends from an allowable independent claim, and further as

Wood fails to cure the deficiency of Sylvie, Applicant respectfully submits that these claims are allowable as well.

Claims 13 and 41 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sylvie in view of Wood and further in view of U.S. Patent No. 5,348,219 to Brintazoli ("Brintazzoli"). As each of these claims depends from an allowable independent claim, and further as these secondary references fail to cure the deficiency of Sylvie, Applicant respectfully submits that these claims are allowable as well.

Claims 16, 34, 42, 52, 62, 68, 69 and 75 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sylvie. As each of these claims depends from an allowable independent claim which defines over Sylvie, Applicant respectfully submits that these claims are allowable as well.

### **Conclusion**

In view of the foregoing response including the remarks, this application is submitted to be in complete condition for allowance and early notice to this effect is earnestly solicited. If the Examiner believes any matter requires further discussion, the Examiner is respectfully invited to telephone the undersigned attorney so that the matter may be promptly resolved.

Applicant does not believe that any fees are due in connection with this response. However, if such petition is due or any fees are necessary, the Commissioner may consider this to be a request for such and charge any necessary fees to deposit account 23-3000.

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.

/Steven W. Benintendi/

Steven W. Benintendi

Reg. No. 56,297

2700 Carew Tower  
441 Vine Street  
Cincinnati, OH 45202  
(513) 241-2324 (voice)  
(513) 421-7269 (facsimile)

#493712